

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. [Redacted]
[Redacted])	
)	DECISION
Petitioners.)	
_____)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated November 16, 2005. The notice of deficiency determination asserted additional Idaho income tax, penalty, and interest in the total amount of \$47,489 for 2002.

FACTS AND PROCEDURAL HISTORY

The petitioners were residents of [Redacted] during 2002. During 2002, they sold certain real property in Idaho from which they realized a gain of \$919,646. [Redacted], they reported a net capital loss. On their Idaho income tax return, they claimed the Idaho capital gains deduction with regard to the entire gain they realized from the sale of their Idaho real property.

The auditor for the Commission denied the Idaho capital gains deduction stating that the petitioners' capital gain was limited to the net capital gain reported on their federal income tax return (zero).

The petitioners contend that the auditor has not followed the intent of the law. They make the following arguments:

1. They contend that, because of the denial of the Idaho capital gains deduction, they should be allowed a higher percentage of their itemized deductions.¹ They contend that they should be allowed more of their charitable contributions over and above the amounts which were limited to a percentage of their adjusted gross income by the Internal Revenue Code.

¹ See letter of January 6, 2006 from [Redacted], page 4 and her letter of May 12, 2006, page 2.

2. They contend that they should be allowed to compute their tax based upon all of the income and losses which were included in the computation of their federal adjusted gross income.

3. They contend that the denial of the previously set out treatments constitutes a violation of the privileges and immunities clause of the U. S. Constitution.

OPINION

A. Inclusion of non-Idaho income and losses.

The first argument set forth by the petitioners is that they should be allowed to compute their Idaho taxable income based upon all of the income included in their federal adjusted gross income. The income they reported on their Idaho income tax return was \$919,649. The adjusted gross income reported in their federal income tax return was \$211,916. The net effect of this proposal is for the petitioners to be able to deduct their (net) losses from sources outside Idaho.

This was addressed in Shaffer v. Carter, 252 U. S. 37 (1920), at pp. 56-57 as follows:

Appellant contends that there is a denial to noncitizens of the privileges and immunities to which they are entitled, and also a denial of the equal protection of the laws, in that the act permits residents to deduct from their gross income not only losses incurred within the state of Oklahoma but also those sustained outside of that state, while nonresidents may deduct only those incurred within the state. The difference, however, is only such as arises naturally from the extent of the jurisdiction of the state in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents it may, and does, exert its taxing power over their income from all sources, whether within or without the state, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to nonresidents, the jurisdiction extends only to their property owned within the state and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence there is no obligation to accord to them a deduction by reason of losses elsewhere incurred. It may be remarked, in passing, that there is no showing that appellant has sustained such losses, and so he is not entitled to raise this question.

The Commission finds this holding of the U. S. Supreme Court controlling. Accordingly, the petitioners are not allowed to compute their Idaho taxable income based upon all of their income and losses.

B. Capital gains deduction and charitable contribution deduction.

The second argument is that petitioners should be able to claim an Idaho capital gains deduction based only upon the capital gain from an Idaho source (without reference to the net capital gain limitation of I. C. § 63-3022H(2)) *and* be allowed a higher charitable contribution deduction than is allowable for federal purposes due to the deduction being limited to a percentage of their adjusted gross income. We will discuss the two parts of this argument separately.

Idaho Code §63-3022H sets out the authority for the allowance of the Idaho capital gains deduction. It stated (2002) in part:

Deduction of capital gains. -- (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero. (Underlining added.)

The petitioners contend that they should be allowed to ignore the provision in I. C. § 63-3022H(2) limiting the Idaho capital gains deduction to the “net capital gain included in taxable income.” They have cited no statutory authority to support their position.

The petitioners contend that the limit of their charitable contribution deduction should be based upon the higher income reported to Idaho rather than the limit imposed by federal law based upon a percentage of their adjusted gross income. Again, the petitioners have cited no statutory authority to support this position.

This argument by the petitioners has two parts. Both parts ask that the petitioner have a deduction that is clearly precluded by the relevant statutes. The petitioner cites no authority for this except for alleging that failure to allow the deduction would be a violation of the privileges and immunities clause of the U. S. Constitution.

It is well established that the taxpayer has the burden of proof when seeking a deduction. In addressing the issue, the U. S. Supreme Court held:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

* * *

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Co., Inc. v. Helvering, 292 U. S. 435, 440 (1934).

The Idaho Supreme Court more recently held:

The Stang's admit that no provision of the Idaho Income Tax Code specifically provides that the \$8,000 can be deducted or exempted from Idaho taxable income. Therefore, the \$8,000 distribution is "Idaho taxable income" under the Idaho Income Tax Code.

[5][6][7][8][9][10] The Stangs urge this Court to "construe" the Idaho Income Tax Code in a manner that would permit the Stangs to avoid paying Idaho income tax on the \$8,000 distribution. They argue that because the Idaho Income Tax Code does not expressly address this situation, this Court should be free to construe the tax code in a manner that would prevent the Stangs from having to pay taxes to both California and Idaho on the same monies. When construing the provisions of the Idaho Income Tax Code, however, we must enforce the law as written. Potlatch

Corp. v. Idaho State Tax Comm'n, 128 Idaho 387, 913 P.2d 1157 (1996). If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. Id. This Court has no authority to rewrite the tax code. Bogner v. State Dep't of Revenue and Taxation, 107 Idaho 854, 693 P.2d 1056 (1984). Any exemption from taxation must be created or conferred in clear and plain language and cannot be made out by inference or implication. Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964). This Court does not have the authority to create deductions, exemptions, or tax credits. If the provisions of the tax code are socially or economically unsound, the power to correct it is legislative, not judicial.

Idaho State Tax Commission v. Stang, 135 Idaho 800, 802-803 (2001).

The Commission finds that the petitioners have failed to carry their burden of showing authority for the deductions they seek.

C. Constitutionality.

The Commission does not have the authority to declare an act of the Idaho legislature unconstitutional. Wanke v. Ziebarth Const. Co., 69 Idaho 64, 75 (1948).

WHEREFORE, the Notice of Deficiency Determination dated November 16, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty, and interest (calculated to December 15, 2006):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$37,738	\$3,774	\$8,038	\$49,550

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' rights to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2006.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in envelopes addressed to:

[Redacted]

[Redacted]

[Redacted]

Receipt No.